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IN THE
COURT OF APPEALS OF INDIANA

CHRISTOPHER FRANCE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0711-CR-952
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0508-FB-299

April 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Christopher France pled guilty to one count of conspiracy to commit dealing in methamphetamine[1] as a Class B felony and was sentenced to twenty years, fifteen of which were to be executed and five years to be served on supervised probation. He appeals raising the two following issues:

I. Whether the trial court abused its discretion in its finding of aggravating and mitigating circumstances; and

II. Whether his sentence was inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On two separate dates in June 2005, a confidential police informant ("CI") met with Charles Frisbie to arrange for the purchase of methamphetamine. Frisbie told the CI that he had to meet with his supplier in order to obtain the methamphetamine and drove the CI to another location where Frisbie met with France, who supplied him with methamphetamine. As a result of these transactions and other offenses, France was charged with ten separate counts including two counts of conspiracy to commit dealing in methamphetamine, each as a Class B felony, six other felony counts and two misdemeanor counts.

On August 22, 2007, France pled guilty to one count of conspiracy to commit dealing in methamphetamine as a Class B felony in exchange for the State dropping the other nine counts and agreeing to a sentence cap of fifteen years executed. Finding France's criminal history to be an aggravating circumstance, the trial court sentenced France to twenty years with fifteen years executed and five years on supervised probation. France now appeals.

[1] *See* IC 35-41-5-2; IC 35-48-4-1(a)(1).

DISCUSSION AND DECISION

I. Abuse of Discretion

Sentencing decisions are within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id*. We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id*. at 491.

France argues that the trial court abused its discretion when it used his criminal history as an aggravating circumstance. He concedes that he has prior convictions, but contends that it was an abuse of discretion for the trial court to use them as aggravators because they did not relate to the instant offense. France also argues that the trial court erred when it failed to find several mitigating circumstances.[2] He first claims that the fact that he has made good use of his time while incarcerated should have been found to be mitigating; he next asserts that his history of substance abuse and need for treatment should have been a mitigating circumstance.

It is proper for a trial court to consider a defendant's prior criminal history as an aggravating factor. *Prickett v. State*, 856 N.E.2d 1203, 1208-09 (Ind. 2006). Therefore, the trial court did not abuse its discretion in finding France's criminal history as an aggravating

circumstance. Although France concedes that he had prior convictions, he claims that these prior convictions did not relate to the present conviction because most of them were over ten years old and were not of the same nature of the instant offense. This is essentially an argument that the trial court improperly assigned too much weight to his criminal history. "The weight of a defendant's criminal history is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Thomas-Collins v. State*, 868 N.E.2d 557, 560 (Ind. Ct. App. 2007), *trans. denied* (citing *Duncan v. State*, 857 N.E.2d 955, 959 (Ind. 2006)). As stated previously, we can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Anglemyer*, 868 N.E.2d at 491.

As for the trial court's failure to find France's proffered mitigating circumstances, the finding of mitigating circumstances lies within the trial court's discretion. *Rawson v. State*, 865 N.E.2d 1049, 1056 (Ind. Ct. App. 2007), *trans. denied*. The trial court, however, is not obligated to consider "alleged mitigating factors that are highly disputable in nature, weight, or significance." *Id.* (quoting *Sipple v. State*, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), *trans. denied*). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493.

[2] France discusses the trial court's failure to find mitigating circumstances in his argument section concerning appropriateness of his sentence, but we find it more appropriate to address his arguments

Here, France claims that the trial court overlooked two mitigating factors. The first was that he had become rehabilitated while incarcerated and wanted to "make a difference, like the difference I've been trying to make inside." *Tr*. at 24. The trial court clearly considered these statements, but found them not to be credible when it stated, "I dis—I don't believe much of anything you said today." *Tr*. at 25. Therefore, we conclude that the trial court did not abuse its discretion in not finding this mitigating factor as it explained that it did not believe France to be credible. France also contends that his substance abuse history and the fact that he needed treatment should have been recognized as mitigating. Although France presented evidence that he used drugs, no evidence was presented that he was in need of treatment. Because this proposed mitigator was not supported by the record, the trial court did not abuse its discretion in not finding it to be a mitigating circumstance.

II. Inappropriate Sentence

Appellate courts may revise a sentence after careful review of the trial court's decision if they conclude that the sentence is inappropriate based on the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Even if the trial court followed the appropriate procedure in arriving at its sentence, the appellate court still maintains a constitutional power to revise a sentence it finds inappropriate. *Hope v. State*, 834 N.E.2d 713, 718 (Ind. Ct. App. 2005).

France argues that his sentence was inappropriate in light of the nature of the offense and his character. He specifically contends that the evidence shows that he can be helped and held accountable without any further incarceration. Because he has never violated any of

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regarding mitigating circumstances in this section.

his previously imposed sentences and because his previous convictions were not related to the present offense, he claims that he should have received a minimal sentence.

As to the nature of the offense, France pled guilty to conspiracy to commit dealing in methamphetamine, which crime consisted of France, the supplier, providing methamphetamine to Frisbie, who delivered it to the CI. Although this particular crime was not especially egregious, it was a Class B felony. As to France's character, although he had not ever been convicted of a felony, his pre-sentence report did contain eleven misdemeanor convictions. These included two juvenile adjudications, which were for assault and battery and being a runaway, and adult convictions for battery, possession of marijuana, resisting arrest, criminal recklessness, another battery, disorderly conduct, domestic battery, intimidation, and illegal taking of a wild animal. Additionally, although France argues that he has never violated probation, he was on informal probation for his most recent conviction at the time of the instant offense and, therefore, violated that probation by committing the instant offense. The evidence presented also showed that France got Frisbie, a homeless man, hooked on methamphetamine and recruited him to deal the drug for him. France also continually attempted to lay the blame for becoming a methamphetamine dealer on his ex-girlfriend, although he testified that he arranged with her to allow other individuals to use her garage as a "meth lab." *Tr*. at 10. We do not believe that France's executed sentence of fifteen years and five years on probation, which was the cap allowed under his plea agreement, was inappropriate in light of the nature of the offense and his character.

Affirmed.

RILEY, J., and MAY, J., concur.